

Abstract

Oversight of intelligence and security agencies has become of significant interest in recent years. In the United Kingdom the principal mechanism for providing parliamentary oversight of the agencies is the Intelligence and Security Committee (ISC). However, until 2013 the ISC was a constitutional anomaly: as a statutory committee appointed by the Prime Minister it was a committee of parliamentarians, but not a committee of Parliament. In recent years a number of parliamentary select committees have undertaken inquiries involving scrutiny of the work of the intelligence agencies and the government's use of intelligence. Some select committees have also argued that Parliament should play a greater role in the scrutiny of intelligence. In 2011 the ISC proposed that it should become a committee of Parliament, an idea taken up in the *Justice and Security* green paper and which became reality in 2013. This article examines the role of select committees in scrutinising intelligence issues and the potential impact of the change in status of the ISC.

Keywords

Accountability, intelligence, Intelligence and Security Committee, legislative oversight, Parliament, select committees

Recent revelations about the extent of surveillance undertaken by the British intelligence and security agencies have again raised questions about the nature and extent of oversight of intelligence agencies and their activities. In the United Kingdom, parliamentary oversight of the intelligence and security agencies (the Security Service – MI5, the Secret Intelligence Service – MI6, and Government Communications Headquarters – GCHQ) has been a relatively recent development. From the late 1980s, legislation, including the Security Service Act 1989 and the Intelligence Services Act 1994, has placed the agencies and their activities on a statutory footing. This legislation also created, for the first time, some form of oversight of the agencies, with the establishment of commissioners to monitor the issuing of warrants to interfere with property and communications, and the creation of the Intelligence and Security Committee (the ISC) to examine the 'administration, policy and expenditure' of the agencies. For almost two decades the ISC was a constitutional anomaly: although constituted of parliamentarians it was not a parliamentary committee, but a statutory committee appointed by and reporting to the Prime Minister. It conducted its business entirely in secret and its reports were subject to scrutiny and redactions within the Cabinet Office before being laid before Parliament and published. This anomalous position led some observers to argue that the ISC had done little to make the intelligence and security services more accountable (Leigh, 2005; Gill and Phythian, 2006).

The status and perceptions of the ISC offers something of a contrast with parliamentary select committees. While some may take a more critical view of the role and success of select committees, since their establishment in 1979 they have undoubtedly become a central feature of the work of Parliament. One of the strengths of the system is that it allows small groups of MPs to develop considerable knowledge of a particular area, and to apply that to scrutiny of government departments. In addition, while the composition of select committees reflects the balance of the parties in the House, they are generally seen as being less partisan in their approach, seeking consensus on the issues that they consider. Select committee reports are also increasingly debated in Parliament, and those from House of Commons committees, in particular, frequently feature in the media. While they can be criticised on a number of grounds, including the significant levels of turnover of members, choosing or avoiding particular topics to minimise divisions on party lines, and for their reports rarely being debated on the floor of the House, they are nevertheless widely portrayed as successful (Norton, 2005; Rogers and Walters, 2006; Bochel and Defty, 2007; Brazier and Fox, 2011; Benton and Russell, 2013).

It is perhaps unsurprising, therefore, that unfavourable comparisons have been made between the ISC and select committees, particularly within Parliament. Concerns about the ability of the ISC to provide effective and accountable scrutiny have led a number of select committees to argue that Parliament should play a more active role in the oversight of intelligence, including, in the words of the Joint Committee on Human Rights, the replacement of the ISC with 'new mechanisms of independent accountability' centred on Parliament (Joint Committee on Human Rights, 2006, p. 43). A number of select committees have also undertaken inquiries into topics which have involved scrutiny of the intelligence agencies and the government's use of intelligence. Then in 2011, after prolonged opposition to suggested changes to its status, the ISC itself recommended that it should become a committee of Parliament, with an expanded mandate, a proposal which was taken forward in the Justice and Security Bill 2012-13 and which came into force during 2013.

This article examines the role of select committees in the scrutiny of intelligence issues and seeks to explain the principal drivers behind the apparent increase in their interest in this area. It also considers what impact the change in the status of the ISC might have on both the scrutiny of intelligence and the work of the select committees. Whereas previous research has focused almost entirely on the ISC, and in particular the relationship between the Committee and the agencies, the project on which this article draws examined the extent to which Parliament as a whole, through debates, questions and the work of committees, might be interested and involved in intelligence oversight. In particular, it drew upon in-depth interviews with 52 MPs and 59 Peers, broadly balanced to represent the political parties and a range of parliamentary experience, including 15 past or current members of the ISC, and parliamentarians with ministerial experience relevant to this subject area, such as former Secretaries of State and Ministers in the Home Office and the Foreign and Commonwealth Office. The research also involved analysis of select committee inquiries and reports that have covered intelligence and security issues since 1994. Very few select committee reports focus solely on the work of the intelligence agencies, and can therefore be identified as of interest by title alone. An electronic search was therefore undertaken within the published reports and proceedings of the committees using terms such as 'intelligence' and 'security' in order to identify relevant inquiries, and those which contained substantive relevant comments or questions were then read in detail. In addition, although of less direct relevance to this article, the project also analysed the published output of the ISC and the parliamentary debates on its reports since 1994, parliamentary questions, early day motions and other relevant debates over the same period, and undertook an examination of the work of all-party groups in this field. The project thus provides a comprehensive overview of parliamentary interest in the work of the intelligence and security agencies.

There are a number of other methodological challenges related to this research. Assessing the impact of parliamentary committees is notoriously difficult (Benton and Russell, 2013), and in the case of intelligence is compounded by the fact that the object of scrutiny, whether the intelligence and security agencies or the Government's use of intelligence, remains shrouded in secrecy. Despite some greater openness, including the establishment of the ISC, much of the work of the agencies, their parliamentary scrutinisers, and the use of intelligence by governments, remains secret. A variety of restrictions also apply to the scrutiny of intelligence issues by parliamentary select committees. For example, in recent years a number of select committees have received briefings from individuals involved in security and intelligence work, including representatives of the agencies. These either take the form of informal briefings which do not appear in the published evidence, or formal evidence sessions which are nonetheless held in private, and if published only appear in redacted form, as is illustrated by the following extract from a report by Home Affairs Committee on the Government's counter-terrorist strategy.

During this inquiry... We also received an informal briefing from Jonathan Evans, Director-General, MI5 on the current threat level... The evidence session with Mr Charles Farr, Director-General, OSCT [Office for Security and Counter-Terrorism] on 15 December was held in private and a redacted transcript subsequently agreed with the Home Office and published (Home Affairs Committee, 2010: 3).

This secrecy has a number of implications: most obviously, it means that whilst the existence of the ISC and the appearance of intelligence personnel before other parliamentary committees suggests that the agencies are subject to parliamentary scrutiny, it is difficult, if not impossible, to observe scrutiny taking place; and while the published output of parliamentary committees, including the ISC, does allow some insight into the process of parliamentary scrutiny of intelligence, it remains very difficult to assess the impact of this scrutiny either on the agencies or the government.

Legislative oversight of intelligence agencies

Intelligence oversight is a process of supervision designed to ensure that intelligence agencies are managed efficiently, and that money is spent properly and wisely. It is also a system of scrutiny designed to ensure that intelligence agencies do not break the law and/or abuse the rights of individuals at home or abroad. There is, however, no one model of intelligence oversight. It will, of necessity, vary from country to country, and may be affected and defined by a state's history, its constitutional and legal systems, and its political culture. Nevertheless, it is possible to identify a range of institutions and actors that may be involved in the oversight of intelligence and security agencies. Oversight is typically seen as taking place at several different levels: internal oversight at the level of the agency; executive oversight by the government; legislative oversight by democratically elected politicians, usually through specialist legislative oversight committees; external oversight by independent bodies such as the judiciary; and oversight by civil society, through agencies such as pressure groups and the media (for example, Born and Leigh, 2005).

Parliamentary scrutiny is then only one of a number of possible mechanisms for oversight of intelligence agencies. Nevertheless, it is widely viewed as central because it provides democratic accountability and legitimacy. At a minimum, the passage of legislation to place intelligence agencies and their activities on a statutory footing ensures that the existence and role of the agencies has been the subject of parliamentary debate, that the agencies are subject to the law, and their activities are placed within an existing constitutional framework. In many cases such legislation has also provided for an ongoing process of legislative scrutiny, often placing intelligence and security on a par with other areas of public policy, ensuring that, as Leigh observes, the intelligence and security sector is not a '*zone sanitaire* for democratic scrutiny' (Leigh, 2009, p.71). Parliamentary oversight may also be valuable in maintaining public confidence in the intelligence and security agencies. The very existence of legislative oversight bodies may serve to reassure the public that intelligence agencies are not abusing their powers. Moreover, the operation of such oversight bodies may be more open and accessible than internal or executive scrutiny, allowing oversight to be seen to be taking place.

Legislative oversight is not, however, without challenges. Fears that parliamentarians might seek to manipulate the process of oversight to gain political advantage, and, perhaps crucially, that parliamentarians could not be trusted not to leak sensitive material, has meant that many states have avoided the use of existing parliamentary mechanisms, such as select committees, and have instead created special legislative oversight bodies. Some have favoured external review bodies appointed by parliament, with Canada and Norway, for example, having external intelligence oversight bodies consisting of panels of independent experts appointed by, but operating at arm's-length from, parliament (Farson, 2005; Mevik and Huus-Hansen 2007). Others, including the Netherlands and South Africa, as well as the UK, have created special committees comprising a small number of trusted parliamentarians, appointed by the executive, to act as a proxy for wider legislative scrutiny (Born, Johnson and Leigh, 2005). In many states the mandates of legislative intelligence oversight bodies are circumscribed, particularly when compared with committees scrutinising other policy areas. One common distinction relates to whether or not intelligence oversight committees examine operational matters or focus solely on the effectiveness or efficiency of intelligence agencies (Born and Leigh 2005). Another relates to whether committees examine the legality of intelligence activities, or concern themselves largely with administrative matters. Long-standing oversight committees, such as those of the United States and Germany, which are often seen as strong, have wide-ranging powers to examine intelligence policies and operations in order to determine legality and effectiveness. Oversight committees with more limited mandates, such as those in the UK and

Australia, have been prevented from scrutinising operational matters and focus primarily on the efficacy of intelligence administration and policy (Born, Johnson and Leigh, 2005).

‘Unique and special’: the Intelligence and Security Committee

From the outset the ISC was designed to be different from existing mechanisms of parliamentary scrutiny. As the Foreign Secretary, Douglas Hurd, observed during the second reading of the Intelligence Services Bill:

It is a parliamentary committee, but it is not in the same family as other Select Committees of the House. It is unique and special and it will have a unique and special job (*Hansard*, 22 February 1994).

The ISC differed from a select committee in a number of important respects. Perhaps most obviously, its members have been appointed by the Prime Minister, after consultation with Opposition leaders, and it has reported to the Prime Minister, rather than Parliament. Like select committees the ISC has been a cross-party committee, reflecting the balance of the parties in the House of Commons, although the balance between MPs and Peers does not reflect that in other joint committees, with only one member having been drawn from the House of Lords until 2010, when two Peers were appointed. When the ISC became a committee of Parliament in 2013 there was no change to the membership. The ISC is also smaller than the average select committee, perhaps reflecting a desire to minimise the numbers of parliamentarians with access to secret information. Indeed, the initial proposal was for a committee of six members, although the number was increased to nine during the passage of the legislation that created the ISC. There has been a tendency to seniority in appointments to the ISC, and although, as with select committees, Ministers may not serve on the ISC, twenty-two of the thirty-seven parliamentarians who have served on the Committee have previously held ministerial office. All of the Chairs of the ISC have previously held Cabinet posts, with the current Chair, Sir Malcolm Rifkind, having served as both Defence Secretary and Foreign Secretary.

The ISC’s mandate was to some extent modelled on that of the select committees, with its statutory role being to examine the ‘administration, policy and expenditure’ of the intelligence agencies, reflecting the mandate of the departmental select committees. Like select committees, the ISC has set its own programme of work, although on a number of occasions it has been asked by the government to carry out investigations on its behalf, perhaps most notably on the Bali and 7/7 bombings. However, the Committee has operated in a markedly different way from select committees: it has met entirely in secret, and although it has published reports, evidence sessions have never been published; ISC members are notified under the Official Secrets Act, which also applies to government ministers, but not to backbench MPs and Peers; and until 2013 the Committee’s secretariat was based in the Cabinet Office rather than in Parliament. As discussed later, the extent to which these features do or do not change in its new guise as a parliamentary committee, may affect its acceptance by other parliamentarians.

Despite the ISC’s privileged access to secret information, its powers to demand information have been more limited than those of select committees. In particular, it has not enjoyed the formal powers of a select committee to ‘send for persons, papers and records’. It could request the disclosure of information from the intelligence and security agencies, but up to 2013 this could be denied by the heads of the agencies, if considered too sensitive. Ministers could also decide that information should not be disclosed to the Committee, and effectively act as gatekeepers, determining the form in which the information is provided to the Committee. There is some debate as to whether this apparent disparity in powers has actually disadvantaged the ISC, and while some academics and parliamentarians have been critical of the ISC’s overwhelming reliance upon the cooperation of the agencies and the executive, others, including former members of the ISC, observe that in reality, while select committees are often denied access to material on the grounds of national security, the ISC has only once been denied access to material that it has requested. ISC members do, however, frequently note a marked disparity between the amount of information made available to them in the

course of their everyday work, and that which has been disclosed during inquiries they have conducted at the government's request, when, in the words of one former member, 'the cupboards were thrown open, we saw everything'.

Although the efficacy of the ISC has sometimes been questioned, when interviewed for this research, former ministers in areas related to the work of the agencies tended to reflect the standard government line that the ISC was the appropriate mechanism for parliamentary oversight, and cited the need for secrecy as an important reason for this ('... we provide everything to the ISC, they see everything... But the whole system of ensuring that documents don't leak really prevents releasing them to a select committee'), and that it did a good job ('They can make you think again, and be more efficient and effective'). Others, however, were less positive about its role, one stating that in their time as a minister responsible for security 'I can't recall any contact with the Committee, or ever thinking the Committee is looking at me', and others that there is scope for the select committees to receive some information, for example 'We shouldn't be saying we spend X pounds on individual agents, but with regard to the budget for the agencies and about spending on particular priorities... I answered questions on spending about particular priorities'.

'New mechanisms of independent accountability': the select committees

Select committee interest in scrutinising the intelligence agencies predates the establishment of the ISC. However, requests by various select committees to access intelligence material have met with mixed success. In 1985, the Foreign Affairs Committee was permitted to see intelligence material as part of its investigation into the sinking of the Argentine battleship, *Belgrano*, during the Falklands conflict. Under what became known as the 'crown jewels procedure', the Committee was shown intelligence material under supervision in the Foreign Office and with the proviso that they could not take notes. However, in 1992, when the Trade and Industry select committee requested similar access to intelligence on exports of weapons parts to Iraq, these were declined, prompting the Chair to write to the Prime Minister to complain about the lack of intelligence service accountability to Parliament (Phythian, 2009).

The Home Affairs Committee was at the forefront of the calls for greater parliamentary oversight of the agencies which led to the establishment of the ISC. Following the passage of the Security Service Act in 1989 the Committee persuaded Stella Rimington, the Director General of the Security Service, to meet them, the first formal contact between an intelligence agency and Parliament (Rimington, 2001). When, in 1992, the Major government was considering what form of oversight should be introduced, the Home Affairs Committee recommended that, since the departmental select committees had proved successful, it would be appropriate for them to oversee the work of the agencies as well as the departments responsible for them (Home Affairs Committee, 1992).

The Home Affairs Committee revisited the question of accountability for the Security Service in 1999, five years after the establishment of the ISC. It observed that the establishment of the ISC had been 'a significant step forward over previous arrangements in democratic accountability' (Home Affairs Committee, 1999, para. 14), but added that the existing arrangements were 'merely transitional' (para. 48) and that accountability to Parliament was both desirable and inevitable. The Committee's report differed from its 1992 report in concluding that it was not the role of the departmental select committees to provide accountability, but rather that the ISC should be reconstituted as a parliamentary select committee for the intelligence services.

In the debate on the second reading of the Intelligence Services Bill in 1994, the then Chair of the Home Affairs Committee, the Conservative MP Ivan Lawrence, observed that as MI5 was an agency of the Home Office, answerable to the Home Secretary, the power of scrutiny over the Security Service should belong to the Home Affairs Committee. He questioned whether, by creating the ISC, the Government 'may be taking away a power of the House to control the Executive', and in particular the right of the Home Affairs Committee 'to ask the head of MI5, or any part of the Security Service questions about administration, expenditure or policy' (*Hansard*, 22 February 1994,

col. 163). The Foreign Secretary, Douglas Hurd, responded by seeking to reassure sceptical parliamentarians that, 'it is certainly not the purpose of the Bill to truncate in any way the existing responsibilities of existing committees', although he added, in what was perhaps a guarded reference to the Home Affairs Committee's 1992 report, that this did not refer to 'the ambitions that select committees may have' (*Hansard*, 22 February 1994, col. 164).

The Foreign Affairs Committee referred back to Hurd's comments in its report on *The Decision to Go to War in Iraq*, observing that to effectively carry out its role of scrutinising the policies of the Foreign Office, 'it will on occasion require access to intelligence material and, on rare occasions, to the agencies themselves' (Foreign Affairs Committee, 2003, para. 161). It noted that in relation to previous inquiries, notably on the Falklands conflict, it had enjoyed such access, but in seeking to carry out its inquiry on the war in Iraq it was frequently denied access to ministers, intelligence documents and heads of the agencies 'on the grounds that Parliamentary scrutiny of those agencies is carried out by the ISC' (para. 48). In a separate report on the implications of the Government's lack of cooperation with its inquiry, the Committee urged Parliament to reconsider the status of the ISC and recommended that it should be reconstituted as a select committee of the House of Commons (Foreign Affairs Committee, 2004).

In 2006, as part of its ongoing scrutiny of counter-terrorism policy, the Joint Committee on Human Rights was refused a requested meeting with the Director General of the Security Service on the grounds that all of the matters they were interested in 'have been or are the subject of investigation by the ISC' (Joint Committee on Human Rights, 2006, p. 43). Similarly, in 2009, the Northern Ireland Affairs Committee was denied access to the review of intelligence intercepts on the Omagh bombing on the grounds that 'it is the role of the Intelligence and Security Committee to scrutinise intelligence material on behalf of the House', prompting a tetchy exchange of letters between the Chair of the Committee and the Secretary of State for Northern Ireland, the Prime Minister and the Chair of the ISC, in which the Government and the ISC repeatedly stated that the intelligence agencies had a statutory duty not to disclose information except to the ISC (Northern Ireland Affairs Committee, 2009). The Northern Ireland Affairs and the Joint Committee on Human Rights were both highly critical of the Government's response, with the JCHR observing that 'we have no desire to obtain access to State secrets, but we do consider it to be a matter of some importance that the head of the security services be prepared to answer questions from the parliamentary committee with responsibility for human rights' (Joint Committee on Human Rights, 2006, p. 43), while the Northern Ireland Affairs Committee drew attention to the Osmotherly rules, which set out the Government's policy on the provision of information to Parliament, and which state that the government is 'committed to being as open and as helpful as possible with select committees' and also suggested that if the disclosure of information to select committees in open session is problematic, the government should 'consider whether the information requested could be provided on a confidential basis' (Northern Ireland Affairs Committee, 2009). The Joint Committee on Human Rights went somewhat further, concluding that there was a need for 'new mechanisms of independent accountability' including 'direct parliamentary accountability' (Joint Committee on Human Rights, 2006, p. 43).

Explaining select committee interest in intelligence

The question of whether the select committees have a role in scrutinising the work of the intelligence and security agencies has been the subject of considerable debate (Defty, 2008; Phythian, 2007), and has led to what some MPs have described as a 'turf war' between a number of select committees and the ISC. In interviews, ministers and members of the ISC frequently questioned the legitimacy of select committee interest in intelligence, tending to attribute it to ambition on the part of some select committees to take on the role of the ISC, while select committee members and many other backbenchers defended the right of committees to, in the words of one MP, 'range as far and wide as they like'. There are, however, a number of factors which may explain the apparent growth in select committee interest in intelligence issues beyond the rather simple conclusions of this principal protagonists in this debate. These include an increase in the amount of intelligence material placed in

the public domain by the government or by the agencies themselves, and consequent questions about why Parliament should be excluded; dissatisfaction with the work of the ISC and its apparent reluctance to engage with Parliament; and a contrasting willingness on the part of the agencies to working directly with the select committees.

A growing role for select committees?

In recent years a range of select committees have taken a greater interest in intelligence issues. While this has been primarily the case for the Home Affairs Committee, the Foreign Affairs Committee and the Joint Committee on Human Rights, if intelligence on Iraq and questions around the possible involvement of the agencies in extraordinary rendition are taken into account, the range of committees that have examined some element of intelligence-related work is considerably larger. Moreover, with the possible exception of the 1992 report of the Home Affairs Committee (which in any case predated the creation of the ISC), this interest does not seem to be associated with any ambition to take on the task of parliamentary scrutiny of the agencies, nor to usurp the role of the ISC in providing that. In the case of the Foreign Affairs Committee and the Joint Committee on Human Rights, they only appear to have become interested in the work of the agencies when they have encroached upon the committees' existing areas of interest, and by 1999 the Home Affairs Committee itself had concluded that scrutiny of the agencies should be carried out not by the existing departmental select committees but by a new select committee formulated on the lines of the ISC.

Indeed, for the most part the evidence suggests that rather than a desire to take on the role of scrutiny of the agencies, it is a lack of cooperation with the select committees on the part of the government and the agencies that has stimulated suggestions for change and prompted a number of select committees to comment on the status of the ISC and whether a parliamentary select committee would be a more appropriate form of oversight.

Responding to changes in the use of intelligence

Far from the existing select committees becoming more ambitious, it is possible that their growing interest in these issues reflects a change in the nature and scale of the threats to the United Kingdom, the activities of the agencies, and the use of intelligence by governments. Indeed, this explanation fits with a point made by the Director General of the Security Service in 2001, referring to a growth in ministerial interest in the agencies but which may be equally applicable in explaining the growth in parliamentary, and indeed public interest:

If you look at the feature of the Cold War that most dominated our business then, it was a process issue, the collection of information in support of the vetting system. But today, when the priority for our work is terrorism and we are making a greater contribution to countering serious crime, then our work has become more relevant to the issues that Ministers look at every day. So there has been much more ministerial interest and attention on the work of the Service (Lander, 2001, p. 30).

Indeed, it is unsurprising that since the terrorist attacks in the United States on 11 September 2001 and in London on 7 July 2005, the terrorist threat and the responses of governments have been of greater interest to parliamentarians, and are reflected in the work of a number of select committees.

Intelligence in the public domain

In some respects closely related to the preceding point, another explanation for greater demands by select committees for access to the agencies is that an increase in the amount of intelligence-related material placed in the public domain, either by the government or the agencies themselves, has led some to question why Parliament's role should be limited. Clearly, the use of intelligence in relation to the war in Iraq, and in countering terrorism and serious crime, has been reflected in the work of select committees, including the series of reports by the Foreign Affairs Committee on 'foreign policy

aspects of the war against terrorism', in reports by the Home Affairs Committee and the Joint Committee on Human Rights on topics related to terrorism, including detention and identity cards, and a range of inquiries by a variety of other committees which have touched on intelligence related topics. In addition, as part of what might be seen as an evolving policy of greater openness on the part of the agencies, the heads of MI5 and MI6 have made public speeches and the agencies have selectively declassified documents. The agencies' long history of cooperation with the media has also become more openly acknowledged in recent years (Dover and Goodman, 2009), with the ISC revealing that a number of media outlets have journalists who are accredited to the Security Service and/or the SIS' (ISC, 2005, para. 84), and that these journalists are able to contact the agencies with questions and receive briefings from them.

These developments have, in part, prompted some select committees to request greater access. Rimington records that the initial approach to her from the Home Affairs Committee was prompted by the news that she had been to lunch with various newspaper editors (Rimington, 2001). The Joint Committee on Human Rights noted 'that the Director General of the Security Service is prepared to give public lectures but is not prepared to give public evidence to us' (2010, p. 3), while in interviews several select committee members expressed their annoyance that journalists were able to ask questions of the agencies but that they were not, and suggested that the existence of the ISC '...tends to close down any argument, and evidently they know best, but it doesn't make for open government and transparency'. Similarly, the Foreign Affairs Committee's anger at the lack of cooperation with its inquiry into the decision to go to war in Iraq, compared with the cooperation received by the ISC inquiry into the same subject (Foreign Affairs Committee, 2003), was compounded by the fact that much of the intelligence material and the witnesses to which they were refused access was made available to public scrutiny as part of the Hutton inquiry into the death of the government scientist David Kelly and the Butler inquiry into intelligence on Iraqi weapons of mass destruction.

Select committees and the ISC

Select committee dissatisfaction with the current arrangements does not simply reflect disgruntlement at losing out in some kind of turf-war over who is responsible for what. In interviews, members of select committees observed that while conflicts of interest between parliamentary committees are not uncommon, these are generally resolved by negotiation between the chairs of the relevant committees. In such circumstances it is sufficient for most committee members to know that the issue is being considered by a parliamentary committee, if not always their own. However, in the case of intelligence, in addition to a lack of confidence that the ISC would provide the same level of scrutiny and accountability as a parliamentary committee, select committee members and other parliamentarians also appear to have been concerned by the lack of negotiation and cooperation between the ISC and the select committees.

Greater cooperation between the ISC and the select committees was one of the suggestions for proposals for reform of the ISC in the *Governance of Britain* green paper. This pointed out that there was 'an overlapping agenda' between the work of the Foreign Affairs Committee, the Home Affairs Committee and the ISC (notably, the Joint Committee on Human Rights was not included), 'with all three touching on issues relating to counter-terrorism and security' (Ministry of Justice, 2007, p. 2). It stated that the government would consult the Chair of the ISC about the relationship between the ISC and the select committees. However, in interviews, many, although not all, current and former members of the ISC were opposed to the desirability or need for such cooperation, stressing that their work is distinct and separate from that of select committees, and often referring to Douglas Hurd's comments about the 'unique and special' nature of the ISC, with its role being to scrutinise the intelligence agencies in place of Parliament, rather than to facilitate their scrutiny by Parliament. Clearly, bringing the ISC into Parliament has the potential to significantly alter these dynamics, although it will obviously not of itself change the relationship with the select committees.

Select committees and the agencies

Interestingly, despite the reluctance of the ISC to work with the select committees, there is some evidence that the agencies themselves have begun to engage directly with the committees. Perhaps in response to the increasing number of requests for access, the Foreign Affairs Committee and the Home Affairs Committee now receive briefings from the Secret Intelligence Service and the Security Service respectively. What began with the Home Affairs Committee's visit to MI5 headquarters in 1993 has evolved into regular briefings, which appear to have begun at some point in the 2001 parliament and which generally take place annually, although they are informal and are not recorded as evidence in any select committee reports. While the briefings may touch upon issues that the committees are working on, they are not a response to specific requests for information, and generally provide a *tour d'horizon* of current threats and concerns. One former member of the Foreign Affairs Committee described the briefings as follows:

We don't find out about the workings of the agencies, we get briefings on things like nuclear proliferation. We get a sense about what they are worried about and how sure they are. What you don't get is stuff about sources, whether intelligence came from signals intelligence or human sources, but I don't think that we need that, and nothing about the structure of the agencies.

While some select committee members suggested that the content of the briefings is fairly anodyne, with one suggesting that they may not contain much information than could be found from open sources such as reading the newspaper, for others the content is less important than the fact that they take place at all, with one Labour MP, a longstanding critic of the agencies, stressing that they ensure that the ISC does not have a monopoly and describing the briefings as 'an important step forward in accountability'.

However, the agencies' apparent willingness to work with the select committees might also be seen as reducing demands for greater and more rigorous parliamentary scrutiny. The briefings are offered by the agencies and may be withdrawn by them, and they are provided on the basis that they are not recorded as evidence and that the content will not be revealed in select committee reports. While the Foreign Affairs Committee and the Home Affairs Committee have been willing to accept this arrangement, the Joint Committee on Human Rights has declined such offers from the Security Service, arguing that:

The purpose of the Director General appearing before us to give evidence would be to enable us to question him publicly, in order to enhance the democratic accountability of the intelligence and security services, make parliamentary assessments of the necessity and proportionality of counter-terrorism measures more transparent, and so increase public confidence. These things cannot be achieved by off the record, secret briefings (2010, pp. 10-11).

The Intelligence and Security Committee as a parliamentary committee

As noted above, the *Governance of Britain* green paper (Ministry of Justice, 2007), while restating the importance of secrecy and the national interest in the work of the intelligence agencies, and recognising the work done by the ISC, suggested that a degree of reform of intelligence oversight was necessary in order to ensure that the agencies are able to command public support and confidence. In addition to encouraging the ISC to consider its relationship with Parliament and with the relevant select committees, it therefore proposed to consult on 'on how the statutory basis of the Intelligence and Security Committee should be amended to bring the way in which it is appointed, operates and reports as far as possible into line with that of other select committees' (p. 32). It noted that a number of changes would be possible within existing legislation, such as increasing transparency over how members are appointed, allowing the ISC to meet in public, and even in Parliament, and strengthening the Committee's Secretariat, for example by separating it from the staff of the Cabinet Office and by appointing an independent investigator.

Despite these proposals, the ISC at that time was generally been resistant to reform. While its annual report for 2009-10 considered 'the Committee's independence' (Intelligence and Security Committee, 2010), it argued only that it should be moved from the Cabinet Office to another government department, and that its budget should be separated out from that of the Cabinet Office and instead should be a fixed percentage of the Single Intelligence Account. In a further small change, following votes in both Houses in 2008, from 2009, although ISC members continued to be formally appointed by the Prime Minister, nominations first received the endorsement of the House.

However, following the 2010 general election, the new Intelligence and Security Committee, now chaired by Sir Malcolm Rifkind, suggested that the existing arrangements were 'significantly out of date' (Intelligence and Security Committee, 2011, p. 81) and proposed significant reform. This included that the ISC should become a committee of Parliament, reporting to both Parliament and the Prime Minister; that its mandate should be widened beyond the three agencies to the broader intelligence community, and that it should go further than administration, policy and finances to encompass all of the work of the agencies; that the power to withhold information from the Committee should be limited to the Secretary of State, rather than the heads of the agencies, thereby allowing the decision to be challenged in Parliament; and that it should have greater investigative and research resources. The Coalition government's *Justice and Security* green paper (Ministry of Justice, 2011) recognised that the ISC was subject to a number of criticisms, including that its operation has been insufficiently transparent, but rejected the creation of a select committee on intelligence, proposing instead, like the ISC itself, the option of it becoming a statutory committee of Parliament, arguing that this would 'allow appropriate and enduring safeguards to be put in place... to ensure the protection of sensitive material' (p. 42). The green paper also took up the ISC's proposals to broaden its remit. Following a consultation period on the green paper the Justice and Security Act reformed the ISC by making it a parliamentary committee, which will make an annual report to Parliament, as well as to the Prime Minister, although the Prime Minister will have the power to require the Committee to exclude information which he or she feels is prejudicial to the work of the agencies. It allowed for members of the ISC to be appointed by the Houses of Parliament following nomination by the Prime Minister (in consultation with the Leader of the opposition), and for the Committee to elect its own chair. The Act also included provision to widen the remit of the ISC to the wider intelligence community, to allow it to undertake some degree of scrutiny of the operational activities of the agencies, although generally again only with the approval of the Prime Minister, and to enable it to require information from the agencies, subject only to the veto of the appropriate Secretary of State.

Conclusions

The involvement of select committees in intelligence issues is not new, and indeed it is possible to identify some element of interest prior to the creation of the ISC in 1994. However, it is also apparent that the level of parliamentary interest in intelligence has increased significantly in recent years, and that this to some extent reflects changes in the use of intelligence by Government and a related increase in intelligence-related material in the public domain. At the same time, in the past a lack of confidence in the ISC on the part of many MPs, and members of some select committees in particular, has led to an attempt by some select committees to fill the perceived gap in parliamentary oversight. Despite such concerns, while many select committee members desire greater access to the agencies and to those who use intelligence in government, there is little evidence that the committees have any ambition to take over the role of intelligence oversight from the ISC. There has in the past been strong support for the reconstitution of the ISC as a parliamentary select committee, and MPs interviewed for this research cautiously welcomed the proposed recent changes to the status of the ISC. However, even if the new ISC manages to secure the confidence of parliamentarians, which is by no means assured, this is unlikely to lead to significant decline in select committee interest in intelligence-related issues. The Justice and Security Act clearly places the ISC as *the* focus of parliamentary oversight of the intelligence community, saying nothing about the role of the select committees. Although the establishment of the ISC as a parliamentary committee is likely to generate greater legitimacy and support within Parliament, if it continues to view itself as 'unique and special' and to

resist cooperation with the select committees, tensions between the ISC and those committees with whose interests its work overlaps, are likely to continue.

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